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OFFICE OF PETITIONS

In re Application of	:	
Christof Eberspacher et al.	:	
Application No. 09/824,570	:	DECISION ON PETITION
Filed: April 3, 2001	:	PURSUANT TO
Attorney Docket No. 225/49834	:	37 C.F.R. § 1.181
Title: SYNCHRONIZER RING	:	

This is a decision on the petition filed on February 21, 2008, pursuant to 37 C.F.R. § 1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

This petition is **DISMISSED**.

BACKGROUND

The above-identified application became abandoned due to the January 30, 2008 decision of the Board for Patent Appeals and Interferences which upheld the Examiner's rejections. Accordingly, the above-identified application became abandoned on April 1, 2008,¹ the expiration of the period for seeking judicial review of this decision.² A Notice of Abandonment was mailed on February 5, 2008, prior to the expiration of this application.

1 Pursuant to MPEP § 1216(III), "[t]hese 2-month periods meet the 60-day requirement of 35 U.S.C. 142 and 145 except for time periods which include February 28. In order to comply with the 60-day requirement, 37 CFR 1.304(b) provides that an additional day shall be added to any 2-month period for initiating review which includes February 28. Appeals will always be timely if the judicial review is initiated within 2 months of the final decision."
2 See MPEP § 1216.

RELEVANT PORTIONS OF THE MPEP

MPEP § 1216(I) sets forth, *in toto*:

An applicant for a patent who is dissatisfied with a decision of the Board may seek judicial review either by an appeal to the U.S. Court of Appeals for the Federal Circuit (35 U.S.C. 141 and 37 CFR 1.301) or by a civil action in the U.S. District Court for the District of Columbia (35 U.S.C. 145 and 37 CFR 1.303(a)). By filing an appeal to the Federal Circuit, the applicant waives the right to seek judicial review by a civil action under 35 U.S.C. 145. See 35 U.S.C. 141 and 37 CFR 1.303(b).

MPEP § 1216(III) sets forth, *in toto*:

The time for filing a notice of a 35 U.S.C. 141 appeal to the Federal Circuit or for commencing a civil action under 35 U.S.C. 145 is within 2 months of the Board's decision. 37 CFR 1.304(a). However, if a request for rehearing or reconsideration of the Board's decision is filed within the time provided under 37 CFR 41.52 (ex parte appeals) or 37 CFR 41.79 (inter partes appeals), the time for filing a notice of appeal to the Federal Circuit or for commencing a civil action expires 2 months after a decision on a request for rehearing or reconsideration (37 CFR 1.304(a)).

These 2-month periods meet the 60-day requirement of 35 U.S.C. 142 and 145 except for time periods which include February 28. In order to comply with the 60-day requirement, 37 CFR 1.304(b) provides that an additional day shall be added to any 2-month period for initiating review which includes February 28. Appeals will always be timely if the judicial review is initiated within 2 months of the final decision.

The times specified in 37 CFR 1.304 are calendar days. If the last day of the time specified for appeal or commencing a civil action falls on a Saturday, Sunday, or a Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday, nor a Federal holiday (37 CFR 1.304(b)).

ANALYSIS

With this petition, Petitioner has requested that the notice of abandonment be withdrawn, due to the fact that the notice was mailed prior to the expiration of the two month period for seeking judicial review of the decision of the Board.

Petitioner is correct in asserting that the notice was improperly mailed prior to the expiration of the two month period for seeking judicial review of the decision of the Board. However, this petition must be dismissed as Petitioner has not

submitted any evidence that judicial review was sought prior to the expiration of the above-referenced two month period.

CONCLUSION

On renewed petition, Petitioner should provide documentary evidence that establishes that judicial review of the January 30, 2008 decision of the Board for Patent Appeals and Interferences was sought prior to April 1, 2008.

If reconsideration of this decision is requested, any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.181(a)." This is not a final agency action within the meaning of 5 U.S.C § 704.

Alternatively, Petitioner may submit a petition pursuant to 37 C.F.R. §§ 1.137(a) and/or (b) either independently or concurrently with any renewed petition pursuant to 37 C.F.R. § 1.181(a).

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,³ hand-delivery,⁴ or facsimile.⁵ Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.⁶

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.⁷

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

3 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

4 Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

5 (571) 273-8300- please note this is a central facsimile number.

6 <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>

7 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.